

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of : Frank HIMMELSBACH ) Art Unit: 1624  
Serial No. : 10/636,088 ) Examiner: Berch, Mark L.  
Confirmation No. : 9824  
Filed : August 7, 2003  
For : Xanthine Derivatives, Their Preparation, and Their Use in  
Pharmaceutical Compositions  
Docket No. : 1/1386 (539/74)

**VIA EFS**

Mail Stop: Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF MARY-ELLEN M. DEVLIN, ESQ.  
IN FURTHER SUPPORT OF PETITION TO REVIVE**

I, Mary-Ellen M. Devlin, Esq., declare as follows:

1. I am a registered patent attorney with power of attorney for the subject application.
2. I have reviewed the Decision on Petition mailed January 29, 2008, concerning the subject application. A Petition to revive was filed in the subject application because a timely and required response to a final office action was not filed.
3. I confirm that the entire delay in filing the required reply from the due date for the reply to the final Office Action until the filing of a grantable Petition pursuant to 37 C.F.R. § 1.137(b) was unintentional.
4. The subject application became abandoned for failure to file a required and proper reply to the final Office Action mailed November 2, 2006, on or before May 2, 2007. A Notice of Abandonment was mailed on June 27, 2007.

5. I spoke with Thomas Blankinship, Esq., the attorney of record in this case, contemporaneously with the issuance of the Notice of Abandonment of this case. My conversation with Mr. Blankinship occurred shortly after July 9, 2007.

6. During the conversation that I had with Mr. Blankinship after July 9, 2007, Mr. Blankinship informed me that he filed on May 2, 2007, an Amendment after Final Office Action under 37 C.F.R. § 1.116, believing that such amendment would place the case in condition for allowance.

7. It is my understanding that an Advisory Action issued June 6, 2007, which was received by our office on June 8, 2007. Thereafter, the examiner called Mr. Blankinship to inquire whether a Notice of Appeal was filed. In my conversation with Mr. Blankinship shortly after July 9, 2007, Mr. Blankinship told me that he responded in the negative to the Examiner. Mr. Blankinship again confirmed to me that he thought the case was in condition for allowance by the amendment that he filed on May 2, 2007.

8. The Notice of Abandonment issued on June 27, 2007, and was received by our office on July 9, 2007.

9. Shortly after the Notice of Abandonment was received, Mr. Blankinship called our outside patent attorney, Timothy X. Gibson, Esq., explained the situation and requested that Mr. Gibson call the examiner to determine whether the Notice of Abandonment could be withdrawn.

10. It is my understanding Mr. Gibson had a conversation with the examiner and confirmed that a Petition would be necessary to revive the case.

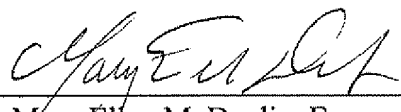
11. It is my understanding that on the same day that Mr. Gibson spoke with the examiner, Mr. Gibson filed the Petition to Revive, along with a further Amendment and Request for Continued Examination.

12. The entire delay in filing the required reply from the due date for the reply until the filing of a grantable Petition pursuant to 37 C.F.R. § 1.137(b) was unintentional. It is clear to me that Mr. Gibson, the attorney signing the petition, had full knowledge of the unintentional nature of the delay, and was authorized to act on behalf of the Petitioner.

13. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: Feb. 6, 2008

By: \_\_\_\_\_

  
Mary-ellen M. Devlin, Esq.  
(Reg. No. 27,928)  
Patent Department  
Boehringer Ingelheim USA Corp.  
900 Ridgebury Road  
P.O. Box 368  
Ridgefield, CT 06877  
Tel.: (203) 798-4866